

IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM

UNITED STATES OF AMERICA,)	Criminal Case No. 18-00010
)	
Plaintiff,)	
)	
vs.)	
)	
JOHN D. WALKER, et al.,)	
)	
Defendants.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE FRANCES TYDINGCO-GATEWOOD,
CHIEF JUDGE
MAY 9, 2022; 7:37 A.M.
HAGATNA, GUAM

Evidentiary Hearing

*Proceedings recorded by certified stenographer, transcript
produced by computer.*

Veronica F. Flores, CSR-RPR
Official Court Reporter
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ALSO PRESENT:

John D. Walker, Defendant

I N D E X

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May 9, 2022; 7:37 a.m.; Hagatna, Guam

* * *

THE CLERK: Good morning, Your Honor. Criminal Case No. 18-00010, *United States of America versus John D. Walker, Phillip T. Kapp, Hansen Helicopters*; Evidentiary Hearing.

Counsel, please state your appearances beginning with the government.

MR. LEON GUERRERO: Buenas and hafa adai, Your Honor, Stephen Leon Guerrero on behalf of United States. Also --

THE COURT: Okay, I think the mics are -- let me see if the mic is on. Go ahead.

MR. LEON GUERRERO: Stephen Leon Guerrero on behalf of United States. Also present are Special Assistant U.S. Attorneys Marie Miller and Samantha Miller.

MS. M. MILLER: Hafa adai, Your Honor.

THE COURT: Hafa adai, good morning everyone.

MR. MARTIN: Good morning, Your Honor, Mack Martin on behalf of John Walker who is also present.

THE COURT: Okay, good morning, Mr. Walker, Mr. Martin.

THE DEFENDANT: Morning.

MR. MCCONWELL: Morning, Your Honor, Edward

1 McConwell, Laura McConwell and Anthony Perez for Mr. Kapp, and
2 also Mr. Ed Han is here for Hansen Helicopters, Inc. And we
3 entered our appearance on -- contingent on the Court's rule --
4 ruling for Hansen Helicopters pursuant to release from our
5 client contract waiver, contract waiver.

6 THE COURT: And what about Mr. Kapp, what's his
7 status right now?

8 MR. MCCONWELL: About an hour ago, I got a text
9 -- well, maybe just a little bit more than that ago, got from
10 his mother, he had a bad episode last night, sleep walking and
11 had some problems and she couldn't wake him up. So she took
12 -- had an emergency -- had an ambulance take him to the
13 emergency room and he's been readmitted to Mayo Clinic in
14 Phoenix and he's just not going to be available today.

15 THE COURT: He's not available for today. Okay,
16 very well. Thank you for --

17 MR. MCCONWELL: I do have her phone number if you
18 need to talk to her.

19 THE COURT: No, I will take your word as an
20 officer of the court, Mr. McConwell.

21 All right. So we are here before the Court, I
22 don't -- I don't think we need to seal this part, do we?
23 We're not going to talk about his medical issues. The Court
24 already knows what the medical issues are. It's just the
25 conflict part. So I don't feel it needs to be sealed, do you,

1 Counsels?

07:39AM

2 MR. MCCONWELL: I don't.

07:39AM

3 THE COURT: Let me just ask, Mr. McConwell, Ms.
4 McConwell?

07:39AM

07:39AM

5 MR. MCCONWELL: We don't -- it'd be fine to have
6 it open, Your Honor.

07:39AM

07:39AM

7 MS. MCCONWELL: As long as we're not going to
8 talk about -- you have the information.

07:39AM

07:39AM

9 THE COURT: No, I have the information. I don't
10 need to go through that. And then prosecution, Ms. Marie
11 Miller?

07:39AM

07:39AM

12 MS. M. MILLER: No objection, Your Honor, to it
13 being open.

07:39AM

07:39AM

14 THE COURT: Okay, very well. And then Mr.
15 Martin, Mr. Han, you would agree?

07:39AM

07:39AM

16 MR. MARTIN: No problem, Your Honor, fine with
17 Mr. Walker.

07:39AM

07:39AM

18 MR. HAN: None, Your Honor.

07:39AM

19 THE COURT: All right. So this is an evidentiary
20 hearing on the proposed waiver of conflict of interest in the
21 joint stipulation filed by the parties on May 5, 2022 and the
22 Court has looked at Rule 44(c). So I need to inquire promptly
23 about the propriety of joint representation and must
24 personally advise each defendant of the right to effective
25 assistance of Counsel, including separate representation.

07:39AM

07:39AM

07:40AM

07:40AM

07:40AM

07:40AM

07:40AM

1 Now, obviously we can't speak to Mr. Kapp because
2 he is ill, not able to make it. So that's one issue. And
3 unless there is good cause to believe that no conflict of
4 interest is likely to arise, the Court must take appropriate
5 measures to protect each defendant's right to Counsel.

6 Let me tell you something, I am not a fan of
7 joint representation. To be perfectly honest with you, no man
8 can serve two masters, as they say in the Bible. And I just
9 don't -- I just am not a fan of it. I know that there is an
10 alleged -- and I just say that, you know, because we haven't
11 really -- anyway, there is an allegation that there is a joint
12 defense presentation, although there is some issues regarding
13 that, but putting that aside, the parties have proposed that
14 Defendant Kapp's off-island Counsel, Laura and Ed McConwell,
15 entered an appearance on behalf of Defendant Hansen
16 Helicopters as well. The Court has severed Kapp -- Mr. Kapp's
17 presence for this trial. And though -- even though Defendant
18 Kapp's been severed, the representation would still be one of
19 which the McConwells could be Counsel for both Kapp and --
20 Mr. Kapp, excuse me, and Hansen Helicopters.

21 And as the parties know, the U.S. Supreme Court
22 generally disfavors joint representation because even the
23 unexpected conflict that could arise later, may not be right
24 now at this moment, although I think there could be or there
25 is, but I'll tell you, having been forced to -- not forced, I

1 shouldn't say forced because you can't really force the judge 07:42AM
2 unless -- well, let's put it this way, having been in a 07:42AM
3 situation where a defendant -- defense Counsel represented two 07:42AM
4 defendants and another judge found that there was no conflict, 07:42AM
5 when it came to sentencing, there clearly was a conflict. I 07:42AM
6 mean maybe during the course of the plea agreement or the 07:42AM
7 trial there wasn't, but I'm just telling you that that's an 07:42AM
8 issue. 07:42AM

9 The Court is concerned with not only a potential 07:42AM
10 conflict later, like as I've just indicated, but the fact that 07:42AM
11 the Defendant Hansen Helicopters, who's being represented ably 07:42AM
12 by Mr. Ed Han, they are said to be paying for Defendant Kapp's 07:42AM
13 legal representation. The fact that Mr. Kapp's capacity to 07:42AM
14 waive a conflict is right now limited, because he can't be 07:43AM
15 here, he can't be on the phone, he can't be -- and I don't 07:43AM
16 want him just on the phone, I want to see him -- he doesn't 07:43AM
17 have to be here live but I would like to see him via Zoom, I 07:43AM
18 want to see him video. And the fact is -- and there is no 07:43AM
19 dispute as to what I'm saying, is that Defendant Hansen 07:43AM
20 Helicopters is Mr. Kapp's employer. 07:43AM

21 So where do we go from here? Let me hear from 07:43AM
22 Mr. or Ms. McConwell, then I'll hear from the prosecution. 07:43AM
23 And Mr. Han too. Yes, I mean we have the jury and I've asked 07:43AM
24 the jury to come back this afternoon. I wanted to get this 07:43AM
25 taken care of. So the jurors are coming in at 1:00, I think. 07:43AM

1 What do you think?

2 MS. MCCONWELL: Your Honor, in reviewing your 07:43AM
3 order and the concerns that you raised in light of *U.S. versus* 07:44AM
4 *Wheat, Holloway v. Arkansas*, you know, we have said that we 07:44AM
5 have jointly been working on a defense -- our -- jointly with 07:44AM
6 all Counsel. 07:44AM

7 In fact, last week when we brought this to the 07:44AM
8 Court's attention, the concern -- and at the hearing with our 07:44AM
9 concerns about Mr. Kapp, is that, you know, we would need to 07:44AM
10 -- the trial will just need to be continued on, and so a way 07:44AM
11 for that not to happen would be for us to shift to be able to 07:44AM
12 also represent Hansen Helicopters who, as you said, is 07:44AM
13 Mr. Kapp's employer, and pursuant to the Rules of Professional 07:44AM
14 Responsibility, an employer and an employee can be represented 07:44AM
15 by the same Counsel. Mr. Kapp will continue to be represented 07:44AM
16 by Mr. Perez. Where -- he is not -- he is not going to enter 07:44AM
17 an appearance with Hansen Helicopters because Mr. Han is 07:44AM
18 representing Hansen Helicopters. So we would be representing 07:44AM
19 Hansen with -- 07:44AM

20 THE COURT: Oh, I see. So you're totally -- I'm 07:45AM
21 sorry. So you're totally like withdrawing representation of 07:45AM
22 Mr. Kapp? And Mr. Perez is taking over when Kapp is able to 07:45AM
23 come into trial? 07:45AM

24 MS. MCCONWELL: Yes. 07:45AM

25 THE COURT: Oh, so you guys are -- so today 07:45AM

1 you're issuing -- I mean if you're doing a withdrawal 07:45AM
2 completely, and -- uhh -- and -- yeah, I guess. I mean I -- 07:45AM
3 yeah, go ahead. 07:45AM

4 MS. MCCONWELL: I do need to respond to a motion 07:45AM
5 that the government filed last week which was relating to a 07:45AM
6 motion that we had filed you know -- we filed on behalf of Mr. 07:45AM
7 Kapp and that's due later this week. So we do need to file -- 07:45AM
8 we do need to file that, but then we can withdraw from Mr. 07:45AM
9 Kapp; he's got Mr. Perez. We -- and we went and entered our 07:45AM
10 appearance for Hansen Helicopters so that we -- you're not 07:45AM
11 going to have the record protected, because I wasn't clear in 07:45AM
12 reading the local rules how -- for instance pro hac vice, how 07:45AM
13 that shifts. And so I didn't think we needed to file a whole 07:46AM
14 separate -- 07:46AM

15 THE COURT: No, I don't -- you don't -- we could 07:46AM
16 talk about the pro hac vice thing later. That's not really a 07:46AM
17 major issue. I mean that's not a major issue in terms of 07:46AM
18 payment right now, okay. 07:46AM

19 So just to be clear, what is the motion that's 07:46AM
20 outstanding that you want to reply to? 07:46AM

21 MS. MCCONWELL: Sanction, motion for sanctions 07:46AM
22 and to strike the cross motion for motion in limine. 07:46AM

23 THE COURT: Okay. All right. All right. But to 07:46AM
24 be clear, you want to have that ability to do that but with 07:46AM
25 regard to the representation of Mr. Kapp for trial right now, 07:46AM

1 you want to withdraw and Mr. Perez is going to take over? 07:46AM

2 MS. MCCONWELL: Will stay. 07:46AM

3 THE COURT: And -- okay, okay, thank you. 07:46AM

4 MS. MCCONWELL: And then we have -- Mr. Kapp did 07:46AM
5 execute a waiver and a consent to this and did his mother -- 07:46AM
6 and as did his mother, who is his power of attorney. 07:46AM

7 THE COURT: Right, so -- but you know what, I 07:46AM
8 like to see these guys in person. 07:46AM

9 MS. MCCONWELL: Right, no, I understand that. We 07:47AM
10 were concerned that this happened. He didn't expect that he'd 07:47AM
11 be very sick. 07:47AM

12 THE COURT: Well, it sounds like he's very sick 07:47AM
13 so I don't disbelieve that. I guess the question is, he's so 07:47AM
14 sick he can't even do a conflict, I mean he can't even talk to 07:47AM
15 me probably, and until -- you know, intelligent knowing waiver 07:47AM
16 of conflict, he probably can't do that. 07:47AM

17 MS. MCCONWELL: We kept, you know, hoping -- he 07:47AM
18 kind of has his good days and his bad days. 07:47AM

19 THE COURT: Yeah. I mean, well, clearly, he has 07:47AM
20 to give a knowing intelligent waiver, so he can't do that. 07:47AM

21 MS. MCCONWELL: Right. 07:47AM

22 THE COURT: Okay, thank you. Mr. Perez, do you 07:47AM
23 agree that you are going to now be lead Counsel for Mr. Kapp, 07:47AM
24 if he comes back into the fold with trial? 07:47AM

25 MR. PEREZ: I agree. 07:47AM

1 THE COURT: Okay. Mr. Han, you -- what's your
2 position of having the McConwells join you as Counsel?

3 MR. HAN: I agree to them joining the
4 representation, Your Honor.

5 THE COURT: So the three of you will be Counsels
6 for Hansen Helicopters?

7 MR. HAN: Correct.

8 THE COURT: All right. And so U.S. attorneys,
9 well, sounds like wow, that was the easiest fix, maybe. I
10 guess.

11 MS. M. MILLER: No, Your Honor -- good morning.

12 THE COURT: Good morning.

13 MS. M. MILLER: We knew there was going to be a
14 request for joint representation. What we didn't know until
15 this weekend was that they were going to withdraw completely
16 as representation -- as lawyers for Mr. Kapp.

17 THE COURT: Yeah.

18 MS. M. MILLER: Which I think, if they represent,
19 which they have that, you know, there is no conflict and
20 Mr. Kapp waives that conflict and Hansen Helicopters obviously
21 waives any conflict, I think then we're perfectly fine. Until
22 this point, there hasn't been a divergent of -- defense,
23 because there's been this ostensible joint defense agreement,
24 so everything has been consistent there.

25 I think the one thing that I want to remind Your

1 Honor is that the government did file a motion regarding the 07:48AM
2 fact that we do believe that Ed McConwell may be a witness in 07:48AM
3 this case at some point. And the reason why I bring this up 07:48AM
4 and it's interesting because it is associated with this motion 07:48AM
5 for sanctions, the defense attorneys, in a pleading, 07:48AM
6 specifically ECF 541, said on the record on behalf of their 07:49AM
7 defendants that the helicopters were owned by the Vanuatu 07:49AM
8 companies, and you've heard that in argument with Mr. Reed, 07:49AM
9 and that they were registered in Vanuatu. 07:49AM

10 After they made that representation in a pleading 07:49AM
11 that they filed with the Court as representatives of the Court 07:49AM
12 but also of their clients, I then contacted defense Counsel 07:49AM
13 and said, I know that these helicopters were never registered 07:49AM
14 in Vanuatu and you made that assertion to the Court in a filed 07:49AM
15 document. They then retracted their statement in ECF 571 and 07:49AM
16 they said that representing to the Court that these 07:49AM
17 helicopters were owned and registered in Vanuatu was a 07:49AM
18 mistake, it was a clerical mistake, it was unintended, they 07:49AM
19 did not intend to do that. That's in ECF 571. Then in reply 07:50AM
20 to a motion filed by the government, we again see Mr. 07:50AM
21 McConwell in 2022 making a representation that the helicopters 07:50AM
22 are owned and registered in Vanuatu, when again, the 07:50AM
23 government knows for a fact that the helicopters have never 07:50AM
24 been registered in Vanuatu. 07:50AM

25 So we have these representations being made on 07:50AM

1 behalf of the defendants that are obviously -- they can't both
2 be true that they are or they are not. We know they are not.
3 We have substantial evidence in the record about the ownership
4 of the helicopters and the registration of the helicopters,
5 which begs the question, why are these assertions being made
6 in documents that are being filed with the Court? Because we
7 have 541 and we have 571 --

8 THE COURT: Okay.

9 MS. M. MILLER: -- then we have the
10 representation just recently in 14 -- I can't remember the
11 exact number, but I'll get it for you with the ECF. So moving
12 forward, and this is an issue we raised earlier, if the
13 defendants are going to rely on advice of Counsel that an
14 attorney told them that they can continue operating the way
15 they're operating because the FAA should have never registered
16 the aircraft in the first place, which we believe is not a
17 legal defense to these charges because these are criminal
18 charges, this is not an administrative proceeding, if that
19 attorney is Ed McConwell, which we believe it is, because the
20 only evidence in the record of this assertion is by
21 Mr. McConwell, then Mr. McConwell becomes a witness.

22 Now, this could be a very elegant solution, if
23 they withdraw and they're permitted to withdraw from
24 representation of Kapp, fantastic, because now they're
25 co-Counsel with Mr. Han, which means when this is fully

1 developed with the Court, I think you will see, Your Honor,
2 that the only evidence in the record to support this assertion
3 is Mr. McConwell. If the Court then agrees he has to be a
4 witness, because that is the only way this is fairly shaken
5 out, then it doesn't stop the trial, it doesn't prejudice
6 Hansen Helicopters, because they have been adequately
7 represented, as Your Honor has recognized, by Mr. Han.

8 So if he has to pull out and become a witness at
9 that point, that's fine. I just want to make sure Your Honor
10 is aware that this is an issue that has been T'ed up from the
11 beginning. We have four times filed motions regarding
12 potential conflict because the only evidence in the record of
13 this defense has been from Mr. McConwell. There is no other
14 evidence in the record.

15 So if they're going to continue to argue this,
16 then the government needs to be able to cross-examine the
17 basis for this assertion and this argument. So I just want
18 Your Honor to be aware of that because that is a potential
19 issue.

20 THE COURT: All right, very well.

21 MS. M. MILLER: And it's ECF 1518 was the ECF,
22 the most recent one where we see the re-emergence of the
23 assertion of Vanuatu.

24 MS. MCCONWELL: For sanctions --

25 (Cour reporter asked Counsel speak on microphone.)

1 THE COURT: Yes, I'm sorry, Ms. McConwell? 07:53AM

2 I'm sorry, can you get on the mic? I'm sorry, we 07:53AM

3 can't hear you. 07:53AM

4 MS. MCCONWELL: 1518 is the government's sanction 07:53AM

5 motion, which the time for us to respond has -- 07:53AM

6 MS. M. MILLER: Yes, and theirs is 1419? 07:53AM

7 MS. S. MILLER: 92. 07:53AM

8 MS. M. MILLER: 1492, I'm sorry. So if you look 07:53AM

9 at 541, that's where they say "owned and registered by 07:53AM

10 Vanuatu"; 571 that's where they say "we made a mistake, we're 07:53AM

11 retracting that statement that they're owned and registered by 07:53AM

12 Vanuatu." Then 1492, they again are making the statement 07:53AM

13 "owned and registered by Vanuatu" and that's why we filed to 07:53AM

14 the motion for sanctions, because you can't have it both ways. 07:53AM

15 And that's the motion that Ms. McConwell said they want to 07:53AM

16 stay as Counsel for Kapp until they respond to that motion and 07:53AM

17 then they'll withdraw as Counsel for Kapp and they will be 07:53AM

18 co-Counsel for Hansen. 07:54AM

19 THE COURT: I think it's maybe 573, not 571. But 07:54AM

20 go ahead. 07:54AM

21 MS. M. MILLER: So 541, then 571, I believe, is 07:54AM

22 the retraction. 07:54AM

23 THE COURT: I think it's 573, not 571. 07:54AM

24 MS. M. MILLER: Okay, and then it was 1492 was 07:54AM

25 where they reassert. 07:54AM

1 THE COURT: Okay. Thank you. Yes,
2 Mr. McConwell?

3 MR. MCCONWELL: And I told Ms. Miller this
4 before, the reference back years ago to being registered in
5 Vanuatu was by my co-Counsel, J. Michael Westin in Texas, he
6 did that without my knowledge and I regret I didn't catch it
7 and we corrected it right away. I don't believe I've ever
8 said since that point that there[sic] have ever been
9 registered in Vanuatu. I can't imagine I would have said it
10 because it's not true.

11 THE COURT: Okay. Well --

12 MR. MCCONWELL: And then if I had to be called as
13 a witness for them, I don't think that even disqualifies me.
14 If I had to be called by as a witness for our case, that might
15 be something different, but we need to respond to your motion
16 because we're not saying what she's saying.

17 THE COURT: Okay, well, let me just think about
18 this then. I think I may allow you to respond of course and
19 then just at least for the limited purpose of continuing your
20 representation of Mr. Kapp and then allow you to submit in
21 writing that you have spoken to your client that he agrees
22 that you guys are withdrawing -- that you have spoken
23 previously when he was of sound mind and that you are actually
24 withdrawing and he understands that and he understands that
25 you are moving to work -- I mean to jointly represent the

1 Hansen Helicopters, as long as you could indicate that to me, 07:55AM
2 I'll take your word for it. Yes? 07:55AM

3 MR. MCCONWELL: He has and he was lucid when he 07:55AM
4 signed the waiver, conflict waiver, and Mr. Perez talked to 07:55AM
5 him, he said you have right to other Counsel to talk about it, 07:55AM
6 he did that with Mr. Perez. He was lucid when he talked to 07:56AM
7 Mr. Perez and he totally understood the whole issue. 07:56AM

8 THE COURT: All right. So just put that in 07:56AM
9 writing what you -- just memorialize that in writing so I can 07:56AM
10 just have that on the record that all of you have spoken to 07:56AM
11 him at the time when he could make a knowing intelligent 07:56AM
12 decision about what's going on. 07:56AM

13 All right. And so it makes everything less 07:56AM
14 complicated that we are not having a joint representation, 07:56AM
15 because I really am not -- I was not going to allow that. I 07:56AM
16 don't care, I just -- like I said, I've seen this happen 07:56AM
17 unfold and it just always unravels to the worst degree. Yes? 07:56AM

18 MS. M. MILLER: This is the concern the 07:56AM
19 government has: Mr. McConwell just stood up and as officer 07:56AM
20 the Court said "I wouldn't have said the helicopters are 07:56AM
21 registered in Vanuatu because I know that's not true." I am 07:56AM
22 reading directly from 1492, ECF 1492, "Argument, the Vanuatu 07:56AM
23 registered aircraft have never been civil aircraft of the 07:57AM
24 U.S." This is on page 2 of Exhibit 1492. ECF 1492. And this 07:57AM
25 is a document that was signed by Mr. McConwell as an officer 07:57AM

1 of the Court.

2 THE COURT: Okay, so why don't we -- we'll go
3 ahead and resolve that when we need to resolve it. I don't
4 need to get into the merits of it because, honestly, I have to
5 just read it and, you know, fully informed.

6 All right. Okay, so things are a lot better.
7 How is everybody? The good news is the jurors are still in
8 one piece.

9 MS. M. MILLER: Yay.

10 THE COURT: And also too, as you probably have
11 heard, I just got back from Washington, D.C. a couple days or
12 actually, I think Thursday night. And so I know I sound like
13 I have a cold but I'm actually have a little allergies and I
14 had that in D.C., you probably heard me. I do not have COVID.
15 I just want you all to know that. I tested every day I was in
16 Washington, D.C.

17 MS. M. MILLER: The allergies, Your Honor, just
18 so you know, in that area, are horrific.

19 THE COURT: Oh, yeah, so I mean -- but they also
20 required every judge, every federal judge to test every
21 morning.

22 MS. M. MILLER: Wow.

23 THE COURT: In D.C. for like six days, to self
24 administer a home test. If you're not used to it, it's very
25 hurtful. It hurts. So -- and I still continue to test

1 because one of the judges just wrote us a note, and said "Oh,
2 sorry, I was sitting next to you, Judge, and I tested positive
3 but I don't have symptoms and I'm still negative." So just an
4 FYI. I bring all this to your attention because the governor,
5 during my absence, has lifted the mask requirements, so I have
6 altered my General Order here at the District Court and I've
7 indicated that pursuant to the governor's executive order that
8 we would follow suit and that we would make it optional.
9 There are some people that still wish to wear masks, including
10 the jurors.

11 At first I considered back and forth should I
12 make the jurors wear a mask, and I thought, well, you know,
13 Guam is pretty much vaccinated and we're not in the clear but
14 I mean we're looking good and so I just decided to make it
15 optional for them. Okay? All right. Any problems with that,
16 Counsels?

17 (No response.)

18 THE COURT: All right. But I will say that the
19 questions downstairs in the entryway is still relevant because
20 we want to make sure that, you know, yeah, we want to make
21 sure that people are -- just have your mask just in case if
22 there is issues, but we want to make sure that before people
23 enter the courthouse, that they don't have the symptoms of
24 COVID and if they have it, they shouldn't even be over here at
25 the courthouse, but I did tell the jurors not to -- I wasn't

1 sure how long this would go today, this morning, this 08:00AM
2 particular hearing. Plus also I have a law month activity 08:00AM
3 that I did not know, I forgot that I was involved in. So I'm 08:00AM
4 going to go that this morning and get it over with, but I will 08:00AM
5 be here and we will start trial promptly at 1:00. All jurors 08:00AM
6 will be here, we don't have to give them lunch today but I 08:00AM
7 feel that based on -- just based on still the COVID situation 08:00AM
8 on Guam, even though it's getting better, but the fact is, is 08:00AM
9 that our lunch break is so tight, 45 minutes is hardly any 08:00AM
10 time, so the Court will continue to provide lunch for the 08:00AM
11 jurors during the course of the trial. 08:00AM

12 Now that we have streamlined the trial, I think 08:00AM
13 it's going to go a lot faster. How long do you think your 08:00AM
14 case in chief will be? 08:00AM

15 MS. M. MILLER: So, Your Honor, if we are going 08:00AM
16 to go on Saturdays as Your Honor represented before, the 08:00AM
17 government will be completed with their case in probably less 08:00AM
18 than three weeks. 08:01AM

19 THE COURT: Okay. 08:01AM

20 MS. M. MILLER: We think it may be two weeks 08:01AM
21 because we do believe, as Mr. Martin represented before, he's 08:01AM
22 a very succinct cross-examiner. 08:01AM

23 THE COURT: Wow. 08:01AM

24 MS. M. MILLER: So I do think this is -- 08:01AM

25 MR. MARTIN: I don't think I said that. 08:01AM

1 MS. M. MILLER: No, he is. And also -- 08:01AM

2 THE COURT: He's laser focused like you? 08:01AM

3 MS. M. MILLER: Yeah, and we also agreed amongst 08:01AM
4 each other and ourselves, we're not going to have a bunch of 08:01AM
5 recross and re-redirect and re-recross -- 08:01AM

6 THE COURT: No, I'll keep it simple, it will be 08:01AM
7 direct, cross, redirect. 08:01AM

8 MS. M. MILLER: Yes, and we also narrowed down 08:01AM
9 our witnesses and that was part of stipulation with the 08:01AM
10 defense. We eliminated some of the experts that we had in 08:01AM
11 lieu of other experts that we have to combine the testimonies, 08:01AM
12 so instead of having multiple witnesses, we have one, so -- 08:01AM
13 and we've also been working on -- I just got from Ms. 08:01AM
14 McConwell yesterday, the Marinho transcripts. 08:01AM

15 So what we're doing is we're working on those 08:01AM
16 deposition transcripts the way in which Your Honor asked for 08:01AM
17 them to be highlighted where the government highlights one 08:02AM
18 color, defense highlights another color and then we place our 08:02AM
19 objections on that one exhibit, so Your Honor will have the 08:02AM
20 opportunity to resolve those objections easily and readily and 08:02AM
21 then we could present that testimony to the jury. 08:02AM

22 THE COURT: All right. And in the pro hac vice 08:02AM
23 matter, I think it's per case, under our local rule, so you 08:02AM
24 don't have to reapply and repay. It's per case, as I 08:02AM
25 understand it. Go ahead. 08:02AM

1 MS. MCCONWELL: I did have one thing, in 08:02AM
2 preparing for this hearing and pulling everything out because 08:02AM
3 some things were filed when we were moving -- oh, I'm sorry. 08:02AM

4 THE COURT: Yeah. 08:02AM

5 MS. MCCONWELL: On our six of our stipulation, 08:02AM
6 you have Randy Brietzman is going to testify as an expert for 08:02AM
7 Jeff Jennings, but Randy Brietzman is not -- has never been 08:02AM
8 designated as an expert, so somebody else will need to testify 08:02AM
9 for Mr. Jennings, and then I was hoping I would get a little 08:02AM
10 synopsis of how you're breaking up all of that -- the other 08:03AM
11 expert disclosures because I don't have like -- you have 08:03AM
12 Mr. Steffes who I think is going to go away, so I didn't know 08:03AM
13 how that was all going to be broken up. 08:03AM

14 MS. M. MILLER: We could just -- we could -- 08:03AM
15 basically what we've done, Your Honor, is the expert 08:03AM
16 representations that we made in our disclosures to the Court 08:03AM
17 very early on about what the experts would say, that is just 08:03AM
18 going to be distributed amongst existing experts. 08:03AM

19 So for example, Mr. Steffes, Mr. Jennings, their 08:03AM
20 testimony is just going to be spread out amongst other experts 08:03AM
21 who have the same background and same expertise. So what we 08:03AM
22 could do for the defense is identify which of these 08:03AM
23 paragraphs -- would that help, Laura? 08:03AM

24 MS. MCCONWELL: Yes. 08:03AM

25 MS. M. MILLER: In the expert disclosures, we'll 08:03AM

1 go to which other individual witnesses and that will, I think,
2 resolve the issue, and we could do that before they testify.

3 MS. MCCONWELL: That'll be great. I just didn't
4 want to create an appearance that we were consenting to Randy
5 Brietzman being elevated to an expert witness because we're
6 not.

7 MS. M. MILLER: Yeah, so Randy Brietzman is --
8 does have the expertise and, you know, he was going to testify
9 as a fact witness for MD Helicopters. He is a pilot. He's
10 been a pilot for more than 25 years, Your Honor, both with
11 military and as a private commercial pilot. He has a
12 substantially similar background to Mr. Jennings, who was
13 disclosed as an expert. We were not going to use
14 Mr. Brietzman as an expert. We were going to use him as fact
15 witness regarding MD Helicopters, but since he is a 25-year
16 helicopter pilot, an expert in HO6's, worked for the FAA
17 previously, we're just, you know, combining a fact witness
18 with an expert witness to have him testify exactly to what
19 Mr. Jennings would have testified to. We could call Jennings
20 and add another witness. That would extend the government's
21 case to three weeks, which is fine.

22 MR. MARTIN: The concern we have, Your Honor, is
23 not so much who they call but we want to know what they're
24 going to say. We've been given all these reports but now
25 they've shuffled the deck on us. I don't want to get up there

1 that I'm holding an ace but we're cross-examining a joker,
2 okay? That's the problem. We don't have expert reports from
3 these people, since they've all been combined. That's the
4 concern I have.

5 THE COURT: All right.

6 MR. MARTIN: Not the number.

7 MS. M. MILLER: And I just said I would resolve
8 that, Your Honor, by absolutely identifying which section and
9 which expert disclosure is going to which witness so that
10 there is no confusion and Counsel is readily available to
11 address it.

12 THE COURT: That's good to know. All right,
13 fabulous. That's good.

14 MR. MCCONWELL: While we're doing housekeeping on
15 experts, they have a witness, Mr. Guzzetti, who may be here,
16 there has been a representation that nine people have been
17 killed involving these helicopters and presumably pointing at
18 the causation of something that Hansen Helicopters or any of
19 the defendants did. We've not seen one -- and they're talking
20 about the pitch link control on the tail rotor as being the
21 cause. We've not seen any evidence of a failure of a pitch
22 link -- a tail rotor pitch link that's caused any accident,
23 let alone a death. And we're going to ask for a Daubert
24 hearing and a motion in limine since that seems to be the way
25 they're starting to do this and it's about half prepared right

1 now, but I wanted to put the Court on notice that when he 08:06AM
2 comes up, he's supposed to be one of the last witnesses before 08:06AM
3 that -- long before that I would have filed a motion dealing 08:06AM
4 with this, but you know, I'm kind of tired of hearing we've 08:06AM
5 killed people, when I don't believe there is any evidence that 08:06AM
6 that's occurred. And I think that's a major issue that should 08:06AM
7 be subject to a motion in limine and a hearing outside the 08:06AM
8 jury before, but we should at least know what they're talking 08:06AM
9 about. We don't even know which people they claim were killed 08:06AM
10 by a pitch link failure, we don't know what the failure was, 08:06AM
11 what happened, which aircraft, no information. And we did 08:06AM
12 file Daubert motions earlier and the Court said "Let's put it 08:06AM
13 off to the time of the trial" and we're here. 08:06AM

14 MS. M. MILLER: Anyway, Your Honor, what we did 08:06AM
15 with Mr. Guzzetti's testimony is, he prepared a summary chart 08:07AM
16 and his summary chart, which the defense has had since August 08:07AM
17 of 2020, identified every single accident, identified the NTSB 08:07AM
18 reports supporting the accidents, the FAA analysis supporting 08:07AM
19 the accidents, has identified every single piece of evidence 08:07AM
20 Mr. Guzzetti is relying on. They had that information since 08:07AM
21 August of 2020, so it's a little insincere to say we're going 08:07AM
22 to file a motion in limine. That time has passed for them to 08:07AM
23 file a motion in limine. 08:07AM

24 Additionally, Your Honor, the very first time we 08:07AM
25 did our trial brief, which, again, was more than two years ago 08:07AM

1 in anticipation of an earlier trial, we disclosed that we will
2 present evidence that nine people died and we also disclosed
3 which accidents we contend were caused by a failure of the
4 tail rotor pitch change link. We've also disclosed through
5 Mr. Guzzetti's material evidence of pitch link failures and
6 what causes them and we've disclosed written communications
7 between the defendants where they are identifying and their
8 own pilots and mechanics are identifying problems with the
9 tail rotor pitch link. They have all the evidence, they had
10 the evidence for years and we will move to strike any motion
11 that they file at this late date because they just haven't
12 been prepared.

13 THE COURT: So let me just say this, it's not
14 before me, so I'm not going to discuss it. When it gets
15 before me, I'll look at it, okay.

16 MR. MCCONWELL: Thank you, Your Honor.

17 THE COURT: As of right now, we're going to trial
18 full steam ahead. And if -- let me just say this, if Counsels
19 are mindful of, you know, streamlining everything, we may not
20 have to go on Saturdays. Let me just say that. I did that
21 because, honestly, because Mr. Lujan likes to drag things out
22 and I'll be honest. So you know, and so I was like, okay, I'm
23 going to put the pressure on and that's the truth. So that's
24 just the way it goes. And to the extent that I was able to
25 control him, things still got dragged out, so I just needed to

1 make sure that everyone understands that when the jurors come
2 here, each time they're here, I want them to be hearing
3 evidence. I don't want them to be waiting while we're doing
4 motions.

5 So a reminder to all Counsels, if you haven't
6 filed a motion and you're going to, make sure that your time
7 really hasn't passed, number one. There has been no waiver of
8 any issues regarding that. And number two, if there is a
9 motion that I find worthy and of a hearing, then we will have
10 the hearing outside of the jury time. But I'm going to stay
11 strict within the guidelines for the jury time because I
12 promised them all that. Okay.

13 All right. Are there any other issues before we
14 adjourn -- recess until 1:00? Yes, Mr. Martin?

15 MR. MARTIN: Your Honor, it's not necessarily an
16 issue, but it'd be how the Court intended to advise the jury
17 that Mr. Kapp's no longer here, Mr. Crowe is no longer here,
18 Mr. -- the McConwells not represent Hansen. I mean there is
19 kind of a housekeeping measure that we may want to consider.

20 THE COURT: I'll prepare a -- I'll work with my
21 law clerk and I'll prepare something.

22 MR. MCCONWELL: Very well.

23 THE COURT: What I'll do is I'll run it by you
24 all before we do it, see if there is any suggestions, or
25 amendments that you might have. But it will be just very

1 neutral. I mean I think that you won't mind me saying that 08:10AM
2 Mr. Kapp has turned ill and that is unable to be here, and 08:10AM
3 I'll say that I agree with that, I received word from his 08:10AM
4 doctors and so I mean I could say that. And then that -- then 08:10AM
5 we'll talk just briefly about there has been -- now you are 08:10AM
6 also representing -- you guys are representing Hansen 08:10AM
7 Helicopters, that Mr. Perez will continue to represent 08:10AM
8 Mr. Kapp. Is there any other issue? And Mr. -- what was his 08:10AM
9 name that was here? The witness? 08:11AM

10 MS. M. MILLER: Reed. 08:11AM

11 THE COURT: Reed. Right, right. Is he doing 08:11AM
12 okay? He's okay, right? 08:11AM

13 MS. M. MILLER: Yes. 08:11AM

14 THE COURT: He's sickly. But he's okay? He's 08:11AM
15 able to come back? 08:11AM

16 MR. LEON GUERRERO: Yes, I've been in contact 08:11AM
17 with his attorney, Attorney Pete Perez, so he'll be here this 08:11AM
18 afternoon. 08:11AM

19 THE COURT: So I'll make sure we change the chair 08:11AM
20 for him because the big chair is just too big for him and too 08:11AM
21 heavy, so he needs a small chair and little more solid instead 08:11AM
22 of leathery. 08:11AM

23 Are there any other issues that I need to tell 08:11AM
24 the jurors? I'll tell -- I'll also remind the jurors that 08:11AM
25 we'll stay on track on the time. And that we're going to go 08:11AM

1 -- I'll say we're going to go through Monday through Friday -- 08:11AM
2 no, we may go Saturdays, but it depends on the time limits. 08:11AM
3 But as of right now, we streamlined it pretty much. I don't 08:11AM
4 want to take away their Saturdays, to be honest with you. 08:11AM

5 MS. M. MILLER: Right. And, Your Honor, I mean 08:11AM
6 after this week, I think that will be very telling. If 08:11AM
7 Mr. Reed is off the stand today and if there isn't recross, I 08:11AM
8 think we can work it out where we just finish on Friday, 08:12AM
9 especially if we're not eating into the jury's time with late 08:12AM
10 filed motions. 08:12AM

11 THE COURT: Well, you're not going to eat into 08:12AM
12 the jury's time, guaranteed. I will tell you that. If we 08:12AM
13 have to come in at 6 in the morning, we'll come. I'll tell 08:12AM
14 you that now. I mean it. You guys know I mean it. So, yes? 08:12AM

15 MR. MARTIN: I don't remember how -- if we 08:12AM
16 advised the jury that Mr. Crowe had been severed or not, Your 08:12AM
17 Honor. 08:12AM

18 MS. M. MILLER: We did. 08:12AM

19 MR. MARTIN: And it's my recollection -- 08:12AM

20 MS. M. MILLER: You did. 08:12AM

21 THE COURT: Emily says I did. Okay. 08:12AM

22 MR. MARTIN: That's -- 08:12AM

23 THE COURT: Any other housekeeping matter we need 08:12AM
24 to take care of? 08:12AM

25 MR. MARTIN: No, Your Honor. 08:12AM

1 THE COURT: Okay. Well, I will see all of you,
2 that will give me a chance to take care of my law month
3 activity. I'll see you at 1:00. Take care.

4 MS. M. MILLER: Yes, Your Honor. Thank you.

5 THE COURT: I'll make sure you get a copy of that
6 -- we're in recess.

7 (Recess taken at 8:13 a.m.)

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10 CERTIFICATE OF OFFICIAL REPORTER

11
12 CITY OF HAGATNA)
13 TERRITORY OF GUAM) ss.
14)

15 I, Veronica F. Flores, Official Court Reporter for
16 the District Court of Guam, do hereby certify the foregoing
17 pages, 1 to 31, to be a true and correct transcript of the
18 proceedings held in the above-entitled matter, to the best of
19 my ability.

20 Dated this 19th day of May 2022.

21
22 /s/Veronica F. Flores
23 Veronica F. Flores
24
25